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Study on resilience, traditional knowledge and capacity-building for pastoralist communities in Africa

Note by the Secretariat

Pursuant to a decision of the Permanent Forum on Indigenous Issues at its eleventh session (see E/2012/43, para. 108), Paul Kanyinke Sena, a member of the Forum, undertook a study on resilience, traditional knowledge and capacity-building for pastoralist communities in Africa. The study focuses on good practices and opportunities. The report is hereby transmitted to the Forum at its twelfth session in response to that decision.

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Study on resilience, traditional knowledge and capacity-building for pastoralist communities in Africa[1]

I. Introduction

1. Pastoralists played a foundational role in the creation of an indigenous peoples' civil society movement in Africa at the end of the twentieth century. As an economic and cultural phenomenon, pastoralism reaches back at least 8,000 years and has played a deeply influential role in social, cultural and political organization in the continent. Pastoralism has thrived in Africa owing to the limitations of rain-fed agriculture and of the severity of changes in climate, which have required a resourceful use and careful stewardship of natural resources by mostly nomadic or semi-nomadic pastoralist peoples.

2. In 2003, the African Commission on Human and Peoples' Rights adopted the report of its working group on the rights of indigenous populations and communities on the notion of indigeneity in Africa. This notion is closely associated with the norms and standards and processes of the United Nations Declaration on the Rights of Indigenous Peoples. The Commission noted that the majority of peoples claiming indigenous status in Africa were living either by traditional pastoralism, by hunting and gathering or by some combination of these and traditional horticultural or fishing economies. Today, not all pastoralists in Africa consider themselves to be indigenous peoples in the way that indigenous people are understood by the Commission and the United Nations. Some peoples, however, have seen the need to claim their indigeneity as part of a national or regional strategy to defend their rights, lands and territories.

3. Major mobilizations of pastoralists claiming their indigenous peoples' rights have taken place in East Africa, the Saharan region of West Africa and, increasingly, among Sahelian pastoralists in West and Central Africa, as well as in parts of South Africa and Namibia. The one area where pastoralism is prevalent but where there has not been substantial mobilization is the north-eastern part of the continent, in the area ranging from the Sudan to Somalia and Egypt. The area includes Ethiopia, where a number of major pastoralist populations can be found.

4. The main challenge for pastoralists in Africa, which is also the key reason why pastoralists are seeking to associate themselves with indigenous peoples' rights, norms and standards, is the non-recognition of mobile land rights and tenure. Insufficient land tenure stems from the colonial legal traditions in Africa, which have tended to erode African customary tenure systems and place greater emphasis on the territorial rights of agricultural peoples at the expense of pastoralists, fishing peoples and hunter-gatherers.

5. Pastoralism is built on the principle that the ecosystem requires time to regenerate and adjust to climate change cycles, and that humans and domestic animals need to move systematically in order to protect both biodiversity and human livelihoods. Humans and domestic animals can benefit from moving to different altitudes or across wide expanses of relatively flat land, and often make use of migratory corridors.

[1] The research and preparation of this document was supported by Nigel Crawhall and members of the Indigenous Peoples of Africa Coordinating Committee.

6. Traditionally, most pastoralist tenurial systems complemented the systems of tenure of hunter-gatherers and farmers. Legal and social discrimination against pastoralists has led to diminished tenure and transhumance opportunities. This leads either to direct conflict between communities, erupting into civil war in some cases, or to the entrapment of livestock and indigenous peoples in limited areas of land and, consequently, to overgrazing. This problem is now exacerbated by the encouragement, by States, of foreign exploitation of resources through activities, such as mining, that further break up the landscape and disrupt the ecological logic of traditional tenure and mobility.

7. In the context of climate change, pastoralists are able to adjust to climate instability. The African continent has experienced extreme swings in climate over time and pastoralists have successfully managed to use their traditional knowledge systems and mobility to navigate the changes and conserve biodiversity. However, political and legal weaknesses make indigenous pastoralists in Africa more vulnerable today than in the past. Pastoralists are currently experiencing greater land loss than they did under colonial regimes, as modern African Governments prefer to provide drylands to farmers, who are politically more important, at the expense of both the environment and indigenous peoples' rights.

8. African Governments are aware that climate change increases the threat of conflict between indigenous pastoralists and other communities vying for water and land. The challenge for indigenous peoples is this: How can changes in land tenure policies and legislation that will help secure land tenure for indigenous people be brought about in a way that preserves harmony with the ecosystem? This issue has already been raised by indigenous pastoralists who are actively involved in national climate change policymaking and, in particular, pastoralists who can bring traditional knowledge and experience into policymaking discussions. These issues are of widespread relevance in Africa, and the Permanent Forum on Indigenous Issues is well placed to raise awareness about them among United Nations agencies in order to promote cooperation between such agencies and African States, the African Commission on Human and Peoples' Rights and indigenous pastoralists on sustainability and rights development.

II. Historical context

9. Some 13,000 years ago, planet Earth began to warm and establish a climate that allowed for the development of new types of economic practices that drew on natural resources. Crops and cattle started to be domesticated almost simultaneously in the Middle East in the eighth millennium BCE. Before that time, humanity had relied on hunting and gathering. Pastoralism and, in particular, agriculture allowed for the densification of human populations and the reorganization of human society. This trigger created complex and sometimes adversarial dynamics between aboriginal hunter-gatherer peoples and the expanding population of pastoralists and farmers. This ancient tension remains in much of Africa, and is complicated by the effects of colonialism and the shift of control of the State apparatus into the hands of agricultural communities.

10. Livestock domestication long predates agriculture on the African continent. Africa has thus had a different historical pattern of changes compared to other regions, including Asia. In part, the dryness of Africa continued to help pastoralists

sustain control over vast territories that were not conducive to agriculture. In some cases, there were symbiotic arrangements between farmers, herders and hunters that endured for centuries or even millennia and helped people survive climate fluctuations.

11. Major academic debates continue about whether Saharan North Africans domesticated cattle as early as 9500 BCE. After 7700 BCE, it is quite clear that a pastoralist economy and cultural system had been established in the Sahara. Archaeologists suggest that two ancient traditions form the basis of the modern indigenous peoples: one is associated with cattle culture in the Sahel and is part of the Fulani cultural system that spread throughout West Africa and the other is the camel-herding culture of the Tuareg peoples, whose language and culture are part of a larger Amazigh/Berber cultural system present in the Sahara and throughout North Africa.

12. Climate fluctuations and prolonged droughts in the Sahara led both the proto-Tuareg and proto-Fulani cultures to spread southward, establishing greater ranges for traditional pastoralism. Today's Fulani herders, known as the M'Bororo or Wodaabe, can trace their cultural and economic ancestry in the Sahel to at least 7,000 years ago.

13. The East and Southern African pastoralist traditions are associated with the movement of peoples out of the Nile valley. Most modern pastoralists are either part of the Cushitic language family originating in the horn of Africa or Nilotic language speakers who migrated from the Nile valley in waves across East Africa. The main Nilotic migration started some 4,000 years ago and eventually reached Southern Africa about 2,000 years ago. The Nilotic and Cushitic language groups, which included both hunter-gatherers and pastoralists, encountered even more ancient populations, including the Hadzabe, the Sandawe and the Khoe-San peoples of Southern Africa.

14. East African herders predate the agriculturalists by about 1,500 years. Improvements in Africa's climate triggered a massive migration of Bantu-speaking peoples out of Cameroon, who eventually covered two thirds of Africa. The Bantu speakers were agropastoralists who encountered the older hunter-gatherer peoples and the established swathes of Cushitic- and Nilotic-speaking pastoralists.

15. Pastoralism and farming did not expand into Southern Africa until relatively recently. A belt of tsetse fly (genus *glossina*) restricted migration between East and Central Africa for millennia. The tsetse fly carries sleeping sickness, which affects humans, and trypanosomiasis, which affects livestock.

16. Indigenous pastoralists from East and Southern Africa first made contact approximately 2,000 years ago. One current genetic theory is that the Datoga/Barabaig pastoralists of the northern part of what is now the United Republic of Tanzania managed to work their way down a narrow tsetse-free corridor and connected with Central Khoe-San-speaking peoples, possibly the Khwe or related peoples. One group of Southern African Khoe-San peoples, the Khoekhoe or Namas, absorbed the East African sheep and cattle culture. It also made substantial cultural and economic adjustments to its societies and proceeded to expand across Southern Africa. Prior to this, all Southern Africans had been hunter-gatherers.

17. Bantu speakers followed the same migration corridor and established themselves in the area that is now South Africa about 800 years ago, only a few

centuries before Europeans arrived to colonize the region. Today, the main pastoralist groups claiming an indigenous status include the various Khoekhoe herders (Griqua and Nama), as well as the traditional Himba herders of northern Namibia.

III. Colonial legal discrimination

18. Colonialism is a complex topic and a phenomenon that has been experienced in a variety of ways and had different long-term effects in the African region. In general, it is reasonable to say that Europeans occupied Africa to extract valuable resources for their own economic needs. This extraction required manual labour. European colonizers focused on agricultural populations, which were larger and sedentary, as the pool of labour for their extractive economies. This led to a more intimate relationship between the colonial settlers and the agricultural peoples, one that resulted in the transfer of languages and greater access to the colonial governing system, than between the colonizers and the hunters and herders, who were mostly seen as primitive, unreliable and not useful as labourers.

19. In addition, Europeans had some difficulty in subduing the nomadic populations, who were armed and used to defending their territories. Ethiopia, a substantially pastoralist country, remained for the most part ungovernable by Europeans. France remained in constant conflict with Tuareg peoples in the Sahara and the M'Bororo mostly stayed outside the reach of colonial authorities. Masai and other East African herders entered into a number of violent conflicts with European invaders, eventually settling a series of treaties with the British Crown.

20. Western Europe too had gone through major economic changes and had a long history of feudal and post-feudal land ownership, where most nomadism had been suppressed or pushed to the farthest corners of the modern State system. Legal systems of tenure were founded for the convenience of Europeans, to ensure a reliable pool of labourers, keep the best arable land from Africans and create political boundaries between European powers. All of these practices were alien to African indigenous pastoralists and had nothing to do with African ecology.

21. The European ideology that penetrated African law was based on the concepts of *res nullius* and *terra nullius*. *Res nullius* refers to the concept of "a thing without an owner" and hence to something that is open to possession by anyone. *Terra nullius* is a concept closely associated with the European doctrine that considered discovered lands to be unoccupied or without a custodian. As pastoralists were mostly nomads, it was easy for Europeans to claim that the territories they lived on constituted *terra nullius*.

22. As Africa moved from the colonial to the post-colonial phase, most indigenous pastoralist peoples experienced marginalization from the State, increased sociocultural discrimination and a loss of land security. This trajectory has remained largely unchanged since the independence phase, with constant encroachment on land rights and a substantial marginalization of pastoralists from formal governance. In most post-colonial countries, pastoralist traditional authorities or institutions are not recognized by the State, or are accorded a lesser status than that of the ruling party and the State-based institutions.

23. The concept of *res nullius* created a legal justification for denying indigenous land tenure in favour of a narrow European definition related to sedentary, colonizing peoples. One of the side effects of the elaboration of that ideological justification for colonization was the idea that there is a temporal and hierarchical order to the world according to which hunter-gatherers are seen as the most savage (and hence inhuman, undeserving of citizenship, rights or dignity). Moving upward, through nomadic pastoralism, agropastoralism and subsistence agriculture, this order led, eventually, to the feudal agricultural and trading empires that existed in several parts of Africa by the eighteenth century.

24. This bias is maintained in modern African law, with legal and constitutional systems failing to recognize the traditional rights to resources of mobile indigenous hunters and herders or their traditional governance institutions. Even though transhumance is an important adaptive technique for African climates and ecosystem maintenance, this importance is not reflected in land tenure laws, which are for the most part based on colonial legislation and norms.

25. It was an African case that led to the judgment that finally declared *res nullius* invalid as a legal principle when applied to foreign conquest. In this regard, the advisory opinion of the International Court of Justice on the *Western Sahara* case is crucial. In the words of Judge Fouad Ammoun:

> The concept of *res nullius*, employed at all periods, to the brink of the twentieth century, to justify conquest and colonization, stands condemned. It is well known that in the sixteenth century Francisco de Vitoria protested against the application to the American Indians, in order to deprive them of their lands, of the concept of *res nullius*. This approach by the eminent Spanish jurist and canonist, which was adopted by Vattel [...] was hardly echoed at all at the Berlin Conference of 1885. It is however the concept which should be adopted today.[2]

The decision of the Court should mean that nomads have the same right to land that urban landowners with title deeds do. In practice, this is not the case, and indigenous peoples remain at a legal disadvantage in Africa owing to this colonial legacy.

IV. Overview of rights issues

26. Indigenous pastoralists are asking that national legislation be aligned with the United Nations Declaration on the Rights of Indigenous Peoples. The foundation is evidently participation in the political system through an arrangement whereby indigenous peoples are allowed to determine the way that natural resources are used in their territories, where their tenure and authority is formally recognized and where decision-making is based on dialogue and consent.

27. Tensions and inequality affect many issues linked to the rights of indigenous pastoralists in modern-day Africa, including the following:

(a) The right to occupy traditional territories;

[2] See http://www.icj-cij.org/docket/files/61/6204.pdf.

(b) The right to be involved in decision-making about grazing lands and conservation;

(c) The right to be included in national censuses with a view to increasing the accuracy of figures on demographics;

(d) The right to enjoy the benefits arising from the exploitation of subsurface minerals and other mining products;

(e) Recognition by the State of indigenous peoples' institutions (traditional authorities and decision-making institutions);

(f) Recognition of pastoralists' tenure and related rights, and protection of fundamental rights against land expropriation without consent, notably in the context of mining and the resettlement of human populations;

(g) Equity in agricultural policy so that pastoralism is recognized as a legitimate livelihood, customary tenure system and involvement in policymaking;

(h) Full participation by indigenous pastoralists in the designation and governance of protected areas and world heritage sites;

(i) Tackling corrupt practices by State officials, as well as by members of the police and military, that unfairly target indigenous peoples.

28. A number of West African States have developed so-called "pastoral codes". Most indigenous peoples are highly critical of these codes, which tend to entrench agricultural views of land use, rights and development.

29. There have been some positive shifts recently, including improvements in the Niger and Kenya, and a restructuring of the political system in Ethiopia. These changes and a growing awareness that pastoralism copes better with climate instability than farming, indicates that the time is ripe to challenge the legal discrimination against indigenous pastoralists. Such a challenge must also lead to the recognition of indigenous institutions and decision-making as part of the relationship between the State and indigenous citizens.

30. There is much room for improvement in national policies on pastoralism and the rights of pastoralists in Africa. Mining and damming are of major concern to most African pastoralists. Pastoralists are not necessarily denying the benefit of mineral extraction, but they are concerned about the following:

(a) Pollution of the water table, particularly radioactive pollution from uranium mining;

(b) Consent and participation of indigenous peoples in decisions about mining concessions in traditional territories;

(c) Maintenance of transhumance corridors even where extraction activities are undertaken;

(d) Equitable sharing of benefits from mineral extraction to the benefit of indigenous peoples and territories;

(e) Dams, which have a major impact on the environment, change disease dynamics and limit access to water for livestock;

(f) Involvement of indigenous peoples in decisions on damming within their territories or on water courses that affect their territories.

V. Climate change

31. Climate instability is having a major impact on the African continent. All regions of the continent are affected, with the pastoralist drylands being particularly prone to droughts and sudden floods. There is a common misperception that drylands are not resilient to climate fluctuations. This is in part an agricultural bias. African grasslands can recover remarkably well, so long as they are not overgrazed when dry and it rains eventually. It is for this reason that mobility and the land tenure and water rights of pastoralists are so important in the current context.

32. Similarly, the external perception is that pastoralists are very vulnerable to climate instability. It is true that droughts are highly stressful and traumatic, and that climate-sensitive diseases are increasing, but pastoralism in Africa was born from a context of poor soils, which encouraged the sustainable use of natural resources and population mobility. The knowledge and adaptability that pastoralists have acquired are great assets in the current context of instability. Farmers are more likely than herders to starve in a drought.

33. Pastoralists are interested in how they can work more closely with African Governments and United Nations agencies to cope with the effects of climate change. Some of the issues are the following:

(a) Involvement of indigenous peoples in national adaptation and climate change policymaking;

(b) Access by indigenous pastoralists to information on climate change and weather forecasting, including medium-term climate predictions, to reduce the risks arising from floods and droughts;

(c) Involvement of indigenous peoples in the monitoring of the weather and climate, and regular interaction with Government departments dealing with water, livestock and biodiversity conservation;

(d) Establishment, before droughts occur, of platforms to avoid conflicting land and water use;

(e) Use of traditional institutions to help resolve conflicts and prevent violence during extreme weather events;

(f) Access to reserve lands, including some protected areas during extreme droughts;

(g) Protection of underground water sources, particularly those that sustain oases, as the overuse of water for mining and industrial agriculture risks the collapse of oasis biodiversity, endangering entire regions;

(h) Promotion of new technologies to assist indigenous pastoralists in coping with climate-related effects, including the use of long-distance information technology to provide weather and climate forecasting, and the promotion of cellular telephone technology and information systems for livestock pricing at local markets (best price within distance);

(i) Development of national policies on loss and damage that help pastoralists protect the genetic diversity of their livestock and their breeding races, including the genetic rights of livestock developed by indigenous peoples, and the establishment of a gene bank or investment scheme to help pastoralists recover from extreme weather shocks using appropriate African domestic breeding stock.

VI. Conclusions and recommendations

34. A number of United Nations agencies, including the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and the International Fund for Agricultural Development, have substantial influence in Africa on agricultural policies. These three agencies, in cooperation with other United Nations entities such as the secretariats of the Convention on Biological Diversity, the United Nations Convention to Combat Desertification and the United Nations Framework Convention on Climate Change could be invited to convene a workshop on African pastoralism, indigenous peoples' rights and climate adaptation.

35. The Permanent Forum on Indigenous Issues continues to engage with the African Commission on Human and Peoples' Rights. At the same time, there could be more focus on making sure that national policies regarding indigenous pastoralism comply with the United Nations Declaration on the Rights of Indigenous Peoples and the 2003 report of the African Commission.

36. The International Union for Conservation of Nature (IUCN) has launched its Global Drylands Initiative, which could be presented to those wishing to know more about indigenous pastoralists in the African region. For example, United Nations agencies and members of the Inter-Agency Support Group on Indigenous Peoples' Issues might be interested in knowing more about the current situation of pastoralists in the African drylands. This information could influence and improve national and regional policymaking within a rights-based paradigm supportive of ecosystem resilience.

37. Indigenous pastoralists in Africa are concerned about their relationship with the Convention on World Heritage Sites of the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Permanent Forum continues to engage with the UNESCO World Heritage Committee, but there is also a need to engage with other bodies (for example the UNESCO World Heritage Centre, the African World Heritage Fund, the IUCN World Heritage Programme and African indigenous peoples' institutions located in world heritage sites) to further discuss improvements to nomination procedures and the governance of sites.

38. The UNESCO Local and Indigenous Knowledge Systems subdivision, the Nairobi Work Programme of the Climate Change Convention secretariat and the World Meteorological Organization have expressed interest in supporting African States in developing inclusive platforms for African adaptation and climate policymaking. Those agencies need to work with other relevant agencies and indigenous rights holders on a framework and resource kit for the inclusion of traditional knowledge in national policymaking.

Annex

Case studies of the Indigenous Peoples of Africa Coordinating Committee

1. The Indigenous Peoples of Africa Coordinating Committee has been involved in several initiatives with pastoralists to help improve dialogue between the State and indigenous pastoralists and between nomadic pastoralists and sedentary peoples.

2. Below is a list of materials related to the use of participatory mapping and related technologies for creating spatial planning and advocacy opportunities with indigenous pastoralists:

(a) 2012 report of participatory mapping by M'Bororo indigenous pastoralists in southern Chad, which deals with issues of migration, climate impacts and conflicts (http://ipacc.org.za/uploads/docs/ChadReport_Nov2012.pdf);

(b) Declaration on adaptation to climate change, indigenous pastoralism, traditional knowledge and meteorology in Africa, the outcome of a conference held in N'Djamena from 7 to 9 November 2011 (http://ipacc.org.za/uploads/docs/N%E2%80%99Djamena_Declaration_eng.pdf, also available in French);

(c) 2011 Committee flyer on the application of traditional knowledge in adaptation policies (http://ipacc.org.za/uploads/docs/Adaptation.pdf);

(d) 2009 Committee report on a conference on the use of geospatial technologies by indigenous peoples for the purposes of environmental advocacy, held in Windhoek from 26 to 28 August 2008 (http://ipacc.org.za/uploads/docs/Windhoek_English_Second_Edition_Web.pdf);

(e) 2008 Committee report on the use of new technologies, participatory mapping and traditional knowledge in heritage education for sustainable development (http://ipacc.org.za/uploads/docs/090505b_ESD_composite_report_Africa08_final.pdf);

(f) The Committee's first pan-African conference on climate change, held in Marrakech, Morocco, from 5 to 10 November 2008 (http://ipacc.org.za/uploads/docs/Marrakech_English.pdf).

3. For further reading on the subject, see "Indigenous peoples and climate change in Africa: traditional knowledge and adaptation strategies" (http://www.charapa.dk/wp-content/uploads/Indigenous-Peoples-and-Climate-Change-in-Africa-final-draft.pdf).